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## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

**[Docket No. TTB–2011–0005]**

**[T.D. TTB–99; Ref: Notice No. 118]**

**RIN: 1513–AB80**

### **Establishment of the Naches Heights Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury Decision.

**SUMMARY:** This final rule establishes the 13,254-acre “Naches Heights” viticultural area in Yakima County, Washington. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**EFFECTIVE DATE:** [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202-453-1039, ext. 175.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background on Viticultural Areas**

### TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

### Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to

describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

### Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area.

Section 9.12 (27 CFR 9.12) of the TTB regulations prescribes standards for petitions for the establishment or modification of American viticultural areas.

Such petitions must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make it distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and

- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

### **Petition for the Naches Heights Viticultural Area**

TTB received a petition from R. Paul Beveridge, owner of Wilridge Winery and Vineyard, to establish the “Naches Heights” American viticultural area in the State of Washington. The proposed Naches Heights viticultural area is located entirely within the larger Columbia Valley viticultural area (27 CFR 9.74) of Washington and Oregon. The city of Yakima lies to the southeast of the proposed viticultural area in a valley at lower elevations.

According to the petition, the proposed Naches Heights viticultural area encompasses 13,254 acres and contains 105 acres of commercial vineyards either producing or expecting to produce wine grapes in the foreseeable future.

#### **Name Evidence**

The “Naches Heights” name applies to an elevated plateau area in Yakima County, Washington, according to the petition and USGS maps. The USGS topographical maps of Naches, Selah, Yakima West, and Wiley City are used in the written boundary description in the petition to define the boundary of the proposed viticultural area. The area between the Naches River and Cowiche Creek is identified as “Naches Heights” on the USGS maps as well as on a public lands map (Yakima Public Lands Quadrangle map, 2001, Washington State Department of Natural Resources), according to the petition.

TTB notes that a search of the USGS Geographical Names Information System (GNIS) describes Naches Heights as a summit in Yakima County,

Washington. Also, a general internet search for “Naches Heights” produced many hits relating to the geographical region in which the proposed viticultural area falls.

The petition provided evidence of local usage of the name “Naches Heights,” including listings for the “Naches Heights Community Center” and the “Little Store on Naches Heights” in The DexOnline.com, Qwest, 2008 Yakima Valley telephone directory. The petition also included multiple articles from the Yakima Herald-Republic referring to “Naches Heights,” including an October 22, 2008, obituary of Albert Robert Couchman, who had worked in orchards in Naches Heights; an October 24, 2008, article about a cross-country competition entitled “Local Report: GNAC’s best heading to Naches Heights”; and an October 26, 2008, article entitled “Naches Heights: Senior Marcie Mullen turned in Central Washington University’s top performance in Saturday’s GNAC cross country championship \* \* \* \*.” In addition, the petition included a 1990 Cowiche Canyon brochure issued by the Bureau of Land Management’s Spokane District that contained a drawing showing the Naches Heights geographical area, with Cowiche Canyon to the immediate west at lower elevations.

#### Boundary Evidence

According to USGS maps submitted with the petition, the Naches Heights plateau landform is surrounded by lower elevation valleys and the lower Tieton River to the west, the Naches River to the north and east, and Cowiche Creek to the south and west. The man-made Congdon (Schuler) Canal is located along a portion of the proposed eastern boundary line, closely following the 1,300-foot

elevation line. TTB notes that these landforms are distinguishable on both the aerial photographs and the USGS maps submitted with the petition.

Comparison of the Proposed Naches Heights Viticultural Area to the Existing Columbia Valley Viticultural Area

The proposed Naches Heights viticultural area lies entirely within, and is 0.001 percent the size of, the Columbia Valley viticultural area. The 11.6 million acre Columbia Valley viticultural area was established by T.D. ATF-190, published in the **Federal Register** (49 FR 44895) on November 13, 1984. It was described as a large, treeless basin surrounding the Yakima, Snake, and Columbia Rivers in portions of Washington and Oregon. The topography of the Columbia Valley viticultural area was described as a rolling terrain, cut by rivers and broken by long, sloping, basaltic, east-west uplifts. In addition, T.D. ATF-190 stated that the Columbia Valley viticultural area is dominated by major rivers and has a long, dry growing season. The Naches Heights petition notes that the ancient Missoula Floods carved much of the basin geography within the Columbia Valley AVA.

The proposed viticultural area is a single, elevated Tieton andesite plateau landform that ends in andesite cliffs that descend into the valleys surrounding the plateau. Although this landform generally shares a similar climate, it is geographically and geologically distinguishable from the surrounding portions of the Columbia Valley viticultural area, according to the petition. The relatively flat terrain of the plateau gently increases in elevation over the 11 miles from southeast to northwest, as shown on the USGS maps, and the entire plateau is elevated over the surrounding valleys. Unlike the rest of the Columbia Valley, no

major rivers cross the plateau landscape, although the proposed viticultural area contains several intermittent streams and small ponds.

### Distinguishing Features

The petition states that geology, geography, and soils distinguish the proposed viticultural area from the surrounding areas.

#### *Geology*

The petition states that approximately one million years ago, the termination of andesite flow from the Cascade Mountains down the valley of the Tieton River formed the Naches Heights plateau. The proposed Naches Heights viticultural area is located on, and encompasses, a geological formation of Tieton andesite, a volcanic rock.

According to the petition, in contrast to the Naches Heights plateau, there are alluvial deposits, including those that are terraced and older, to the north, east, and south of the proposed viticultural area. To the west of the area are alluvial deposits and Grande Ronde Basalt, Ringold Formation gravels, the Ellensburg Formation, and the Cascade Mountains.

#### *Geography*

The petition states that the proposed Naches Heights viticultural area is a plateau that terminates in cliffs of andesite to the north, east, and south. The andesite cliffs distinguish the proposed viticultural area from the Naches River Valley, the Cowiche Creek Valley, and the nearby Yakima River Valley. The USGS maps show that the Naches Heights plateau is elevated in comparison to the surrounding river and creek valleys. Aerial photos submitted with the petition

also show the Naches Heights plateau landform and the cliffs that surround it in contrast with the surrounding lower elevation valleys.

On the far west side of the proposed viticultural area, the andesite cliffs are subsumed by the foothills of the Cascade Mountains, according to the petition and the USGS maps. Although not distinguished by steep cliffs, the proposed western boundary line marks the end of andesite rocks and the beginning of the Cascade Mountains foothills, as shown in an aerial photo submitted with the petition. Elevations gradually rise heading west and northwest of the Naches Heights into the Cascade Mountains and the 3,578-foot Bethel Ridge. The high mountainous elevations to the west create a rain shadow effect that protects the Naches Heights plateau from Pacific winter storms.

Elevations on the Naches Heights and along the Tieton andesite cliffs also distinguish the plateau from the surrounding regions, according the petition. The lowest elevations of the proposed viticultural area are approximately 1,200 feet, which is at the tip of the andesite flow at the far eastern edge of the proposed viticultural area. From this point, the cliffs rise to 1,400 feet, according to the USGS maps. The highest elevation of the plateau, located near the far western end of the proposed viticultural area, is approximately 2,100 feet, at which point the cliffs drop immediately to 1,600 feet. The Yakima City Hall lies to the southeast of the proposed viticultural area at 1,061 feet, a significantly lower elevation than that of the Naches Heights. As explained in the petition, cold air drains off the plateau and into the surrounding valleys, thereby reducing potential frost damage and winterkill to vineyards on the Naches Heights.



## *Soils*

After the volcanic flow of andesite cooled and hardened to form the Naches Heights plateau, pockets of loess, or wind-blown soil, were deposited on the plateau, according to the petition. After a period of about 1 million years marked by winds and volcanic eruptions in the Cascades, deep beds of unique soils formed in the loess pockets on the plateau. The predominant soils on the plateau are Tieton loam and Ritzville silt loam (U.S. Department of Agriculture, National Resource Conservation Service, Web Soil Survey at <http://websoilsurvey.nrcs.usda.gov/>). According to the petition, the only major difference between Tieton loam and Ritzville silt loam is that the latter formed in deeper pockets of loess, thus creating a very consistent soil type throughout the proposed viticultural area.

The Naches Heights plateau landform, according to the NRCS web soil survey, has generally deep loess soils with adequate drainage and deep rooting depths conducive to successful viticulture. Further, the grape vine roots are not prone to freezing, or winterkill, in the deep plateau soils.

Unlike the plateau, much of the greater Columbia Valley region that surrounds the Naches Heights was covered by alluvial material deposited by the ancient Missoula Floods, according to the petition. Hence, the proposed viticultural area is surrounded mainly by gravelly alluvial soils readily distinguishable from the Tieton loam and Ritzville silt loam of Naches Heights. Harwood loam, a transitional soil formed in both loess and alluvium, is located in

small areas of the southern portion of the Naches Heights that is outside the boundary line of the proposed viticultural area.

Rocks, cobbles, and shallow rooting depths are characteristics of the lower elevation valley region that surrounds the Naches Heights plateau, according to the NRCS data. In the valley region, the cold air from the surrounding mountain elevations drains onto the valley floor and ponds to create stagnant, cold air environments that make vine growth difficult during some seasons, the petition explains. Unlike the Naches Heights soils, the valley and floodplain soils, including the Weirman, Wenas, and Kittitas series, are subject to seasonal flooding and a water table close to the surface of the soil, according to NRCS data. In addition, the valley vines have shallow rooting depths that can reach the water table and be frozen during extreme cold weather. Further, seasonal flooding can affect some portions of the surrounding valley area.

#### **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 118 regarding the proposed Naches Heights viticultural area in the **Federal Register** (76 FR 30060) on May 24, 2011. In that notice, TTB requested comments from all interested persons by July 25, 2011. TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. TTB expressed particular interest in whether the geographical features of the proposed viticultural area are so distinguishable from the surrounding Columbia Valley viticultural area that the proposed Naches Heights viticultural area should no longer be a part of the Columbia Valley viticultural area. TTB also sought

information on the impact of the establishment of the proposed Naches Heights viticultural area on wine labels that include the words “Naches Heights,” and whether there would be a conflict between the proposed viticulturally significant terms and currently used brand names.

TTB received no comments in response to Notice No. 118.

### **TTB Finding**

After careful review of the petition, and after receiving no contrary evidence during the comment period, TTB finds that the evidence provided by the petitioner supports the establishment of the proposed Naches Heights viticultural area within the Columbia Valley viticultural area as proposed in Notice No. 118. Accordingly, under the authority of the Federal Alcohol Administration Act and part 4 of TTB’s regulations, TTB establishes the “Naches Heights” viticultural area in Yakima County, Washington, effective 30 days from the publication date of this document.

### **Boundary Description**

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice. In this final rule, TTB altered some of the language in the written boundary description provided in the petition and published as part of Notice No. 118. TTB made these alterations in the written boundary description language for clarity and to conform the written boundary description to the boundary of the proposed viticultural area as marked on the USGS maps submitted with the petition.

### Maps

The maps for determining the boundary areas of the viticultural area are listed below in the regulatory text.

### **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, "Naches Heights," is recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the regulation clarifies this point. Once this final rule becomes effective, wine bottlers using "Naches Heights" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

On the other hand, TTB finds that no single part of the proposed viticultural area name standing alone, such as "Naches," has viticultural significance. Accordingly, the regulatory text set forth in this document specifies only the full "Naches Heights" name as a term of viticultural significance for purposes of part 4 of the TTB regulations. The establishment of the Naches Heights viticultural area will not affect any existing viticultural area, and any bottlers using Columbia Valley as an appellation of origin or in a brand name for wines made from grapes grown within the Naches Heights viticultural area will not be affected by the establishment of this new viticultural area. The establishment of the Naches Heights viticultural area will allow vintners to use

both “Naches Heights” and “Columbia Valley” as appellations of origin for wines made from grapes grown within the Naches Heights viticultural area.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

### **Regulatory Flexibility Act**

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a

proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

### **Executive Order 12866**

This final rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

### **Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

### **List of Subjects in 27 CFR Part 9**

Wine.

### **The Regulatory Amendment**

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

### **PART 9—AMERICAN VITICULTURAL AREAS**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

2. Subpart C is amended by adding § 9.222 to read as follows:

### **Subpart C—Approved American Viticultural Areas**

#### **§ 9.222 Naches Heights.**

(a) Name. The name of the viticultural area described in this section is “Naches Heights”. For purposes of part 4 of this chapter, “Naches Heights” is a term of viticultural significance.

(b) Approved maps. The five United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Naches Heights viticultural area are titled:

- (1) Selah, Wash., 1958, photorevised 1985;
- (2) Yakima West, Wash., 1958, photorevised 1985;
- (3) Wiley City, Wash., 1958, photorevised 1985;
- (4) Naches, Wash., 1958, photorevised 1978; and
- (5) Tieton, Wash., 1971, photoinspected 1981.

(c) Boundary. The Naches Heights viticultural area is located in Yakima County, Washington. The boundary of the Naches Heights viticultural area is as described below:

(1) The beginning point is on the Selah map at the intersection of the Burlington Northern single-track rail line and the Congdon (Schuler) Canal, section 9, T13N/R18E. From the beginning point, proceed south-southwesterly along the single rail line, onto the Yakima West map, approximately 0.35 mile to the first intersection of the rail line with an unnamed creek, locally known as Cowiche Creek, section 9, T13N/R18E; then

(2) Proceed upstream (westerly) along Cowiche Creek, onto the Wiley City map and then onto the Naches map, approximately 6.25 miles to the confluence of the North and South Forks of Cowiche Creek, south of Mahoney Road, section 3, T13N/R17E; then

(3) Proceed upstream (northwesterly) along the North Fork of Cowiche Creek approximately 1.6 miles to the intersection of the North Fork with Livengood Road, section 34, T14N/R17E; then

(4) Proceed north and northwest on Livengood Road approximately 1.12 miles until the road turns west and joins Forney Road, and continue approximately 1.02 miles along Forney Road to the intersection of Forney Road with the North Fork of Cowiche Creek, section 28 northwest corner, T14N/R17E; then

(5) Proceed upstream (northwesterly) along the North Fork of Cowiche Creek approximately 1.8 miles to the intersection of the North Fork with the section 17 west boundary line, T14N/R17E; then

(6) Proceed straight north along the section 17 west boundary line to its intersection with Cox Road, and then continue north along Cox Road to the intersection of Cox Road with Rosenkranz Road, section 17 northwest corner, T14N/R17E; then

(7) Proceed west on Rosenkranz Road, onto the Tieton map, approximately 0.6 mile to the intersection of Rosenkranz Road with North Tieton Road, section 7 south boundary line, T14N/R17E; then

(8) Proceed north on North Tieton Road approximately 0.5 mile to the intersection of North Tieton Road with Dilley Road, section 7, T14N/R17E; then

(9) Proceed west on Dilley Road approximately 0.5 mile to the intersection of Dilley Road with Franklin Road, section 7 west boundary line and the R16E and R17E common line, T14N; then



(10) Proceed north on Franklin Road approximately 0.8 mile to the intersection of Franklin Road with Schenk Road and the section 6 west boundary line, T14N/R16E; then

(11) Proceed west on Schenk Road approximately 0.55 mile to the intersection of Schenk Road with Section 1 Road, section 1, T14N/R16E; then

(12) Proceed straight north from the intersection of Schenk Road and Section 1 Road approximately 2.2 miles to the 1,600-foot elevation line, section 36, T15N/R16E; then

(13) Proceed easterly and then southeasterly along the 1,600-foot elevation line, onto the Naches map, approximately 7.5 miles to the intersection of the 1,600-foot elevation line with the section 26 north boundary line, T14N/R17E; then

(14) Proceed straight east along the section 26 north boundary line approximately 0.25 mile to the intersection of the section 26 north boundary line with the 1,400-foot elevation line, T14N/R17E; then

(15) Proceed southeasterly along the 1,400-foot elevation line approximately 2.5 miles to the intersection of the 1,400-foot elevation line with Young Grade Road, section 31, T14N/R18E; then

(16) Proceed east in a straight line approximately 0.15 mile to the Congdon (Schuler) Canal, which closely parallels the 1,300-foot elevation line, section 31, T14N/R18E; and then

(17) Proceed southeasterly along the Congdon (Schuler) Canal, onto the Selah map, approximately 3.25 miles, returning to the beginning point, section 9, T13N/R18E.

Signed: September 28, 2011.

**John J. Manfreda,**  
Administrator.

Approved: October 20, 2011.

**Timothy E. Skud,**  
Deputy Assistant Secretary  
(Tax, Trade, and Tariff Policy).

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